May v. *Holdrige*, 23 Wis. 93; *Breevort* v. *Detroit*. 24 Mich. 322. For general subject see *State* v. *Newark*, 34 N. J. 236; *City of Chester* v. *Black*, 6 L. R. A. 802 (Notes.)

WILLS—EQUITABLE CONVERSION—POWER OF EXECUTOR AFTER DISCHARGE.—Testator left real estate and directed the executor to dispose of it and divide the proceeds among devisees when they should reach the age of twenty-five years. The land was not sold by the executor, however, until after he had been discharged. In an action by a devisee against the executor and his vendee, to quiet title, *Held*, that the provisions of the will operated to convert the land into personalty, and not to convey the title to the executor in trust and that the discharge before he made the transfer terminated his power and no title passed. *Boland* v. *Tiernay* (1902), — Iowa—, 91 N. W. Rep. 836.

WILLS—UNDUE INFLUENCE—BURDEN OF PROOF.—Testatrix preferred certain of her children in her will and it was contended that she was influenced by one of them. The instruction of the lower court placed the burden of showing undue influence on the contestant. *Held*, proper. *Crossan* v. *Crossan* (1902), — Mo. —, 70 S. W. Rep. 136.

Testatrix devised her property to her husband. Undue influence was set up and the lower court ruled that the burden of proof was upon the complainant and upon appeal, *Held*, the ruling was proper. *Swearinger* v. *Inman* (1902), — Ill. —, 65 N. E. Rep. 80.

The courts in above cases assume that the law is settled that the burden of proof rests with him who is contesting the will, in the first case saying "The instructions on that subject were but a repetition of those often approved by this court and no good purpose would be subserved by their needless repetition in this opinion." This is probably the weight of authority. *McTerue* v. *Barnes*, 108 Mass. 344; *Tyle* v. *Gardner*, 35 N. Y. 559 (594); *Potter's App.*, 53 Mich. 106, 18 N. W. Rep. 575, but this doctrine has been sharply criticised by some of our ablest text writers. PAGE ON WILLS, p. 481. The right to make a will depending on statute and it being necessary that the testator should be of full age, sound mind and memory, and not under restraint, it might be urged that the party offering a will must establish every fact necessary to bring the case under the wills act; or that the contestant does not confess and avoid in setting up undue influence, but traverses and it is for the proponent who offered the instrument for probate to show it to be the true will of the alleged testator. JARMAN ON WILLS (Bigelow Ed.), p. 68.